IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition No.10529 of 2000

M/s.Saketh India Ltd.,
represented by its
Executive Director
K.S.Rao, Bangalore. Petitioner

v.

1. State of Tamil Nadu, rep. by
Secretary to Government,
Industries Department,
Fort St. George, Madras 9.

2. The District Collector,
Vellore District, Vellore. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issue of writ of declaration declaring that the lease amount and the security deposit totalling to Rs.44,55,000/- retained by the first respondent paid for the quarry lands measuring 6.54.0 hectares comprised in survey No.1/2 of Thokkiam village, Thirupathur Taluk, Vellore District (formerly North Arcot District) and the demand for dead rent and area assessment in respect of the said land is illegal and consequently direct the respondents to refund the said sum together with interest @ 24% per annum.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents : Mr.R.Thirugnanam,
Special Government Pleader

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ORDER

The writ petitioner has approached this Court by filing this writ petition seeking for the relief for issuance of writ of declaration or any other writ to declare that the lease amount and the security deposit totalling Rs.44,55,000/-, retained by the first respondent paid for the quarry lands measuring 6.54.0 hectares comprised in survey No.1/2 of Thokkiam village, Thirupathur Taluk, Vellore District (formerly North Arcot District) and the demand for dead rent and area assessment in respect of the said land is illegal and consequently direct the respondents to refund the said sum

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together with interest @ 24% per annum.

2. The facts giving raise to the filing of the writ petition is as follows :

The second respondent, as per the then existing Rule 8A of the Tamil Nadu Minor Mineral Concession Rules, invited tenders in respect of several granite quarries situated in the Government poromboke lands. As the petitioner is having an existing industry, which is a pre requisite requirement for having a granite quarry lease, it submitted a tender application in respect of the quarry over an extent of 6.54.0 hectares in survey No.1/2 in Thokkiam village and has become the highest bidder. The bid was confirmed in favour of the petitioner. Consequently, the petitioner deposited the entire bid amount of Rs.44,55,000/-, which included 10% of the bid amount, paid at the time of submitting the tender. Necessary lease agreement has been executed on 29.05.1992 for a period of ten years from 29.05.1992 to 28.05.2002. Immediately after execution of the lease deed, the petitioner requested the second respondent to hand-over possession of the lease area so as to enable it to carry on the quarrying operation. But the petitioner came to know that the said area is a forest area and belongs to the forest department and the process of declaring the said area as reserve forest area was also going on.

3. According to the petitioner, the respondents invited tender and granted lease to the petitioner without obtaining necessary permission from the forest department which is a statutory requirement. Inspite of several requests made by the petitioner, the second respondent has not handed over possession of the said quarry land for a considerable period of time. Hence, the petitioner, having realised the difficulty of the respondent in handing over of the leased land for the purpose of quarrying granite, requested the respondents to refund atleast the amount paid by it, pursuant to the tender. Having received the letter of the petitioner, the second respondent made a demand for a dead rent and area assessment on the premise that the petitioner has not carried on the quarrying operations in the said land. The respondents neither handed over possession of the said quarry land nor refunded the tender amount. Apart from the above said amount of Rs.44,55,000/- the petitioner has also spent a sum of Rs.3,17,000/- towards stamp charges and a sum of Rs.40,500/- towards registration charges for getting the lease deed registered.

4. It is the basic requirement that before-ever quarry lands are offered for tender for quarrying granite, to have the lands surveyed and find as to whether quarry is viable and the quarry land is a government poromboke land, as there was no provision for prospective mining in the Tamil Nadu Minor Mineral Concession Rules, and the respondents are the authority who are having possession of the revenue records to locate the quarry and find out the quarry land is a government poromboke land or the forest land. If the land

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is a forest land, prior permission from the conservator of forests for bringing the land for quarrying ought to have been obtained by the respondents. The respondents, without following any of the statutory requirements, offered the quarry lands for tender and the petitioner believing that the action of the respondents would be in conformity with the statutory requirements, participated in the tender and paid the amount. The petitioner has not benefitted in the quarrying operations as it was not even allowed to enter upon the quarry, rather it was not been handed over possession of the quarry land. On the above said grounds, the present writ petition is filed.

5. The District Collector, the second respondent has filed a counter affidavit almost accepting the averments contained in the affidavit bringing the quarry land for public auction and payment of lease amount as stated by the petitioner. However, it is contended that the lessee has accepted the lease deed condition No.5 which provides that the lessee should pay seigniorage fee or dead rent which ever is more in respect of the actual quantity of the mineral removed or consumed and besides the above said charges, the lessee shall also pay the other levies as may be prescribed by the State Government from time to time. The petitioner having kept quite for quite a long number of eight years, almost at the end of the lease period has filed the present writ petition. It is the responsibility of the tenderer to ascertain the viability of the deposit available in the area. Before inviting tenders, the land availability report was called for from the Tahsildar, Thirupathur, who by his report dated 25.06.1990, has reported that the said quarry land is eligible for auction and the village records revealed that the subject quarry is classified as "unreserved forest". It was further contended that after the execution of the lease deed on 29.05.1992 automatically the demised premises comes under the possession of the lessee and if the petitioner was of the opinion that the quarry land comes under the reserve forest, the petitioner ought to have surrendered the quarry at the initial stage itself, but it failed to do so. On that basis, the respondents sought to dismiss the writ petition.

6. At the time of admission of the writ petition, interim order was granted as prayed for and after hearing the learned counsel on either side and upon perusing the counter filed by the respondents, this Court made the stay absolute by its order dated 06.11.2000.

7. From the above pleadings, the point to be resolved is whether the petitioner is entitled for the refund of the amount, as claimed by it.

8. There is no dispute that the subject quarry land has been given in lease to the petitioner by G.O. Ms.2D No.155 Industries Department dated 07.06.1991 for a period of ten years from 29.05.1992 to 28.05.2002. The lease deed was executed on 29.05.1992. However, it is the case of the petitioner that

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possession has not been handed over to him inspite of the grant in his favour and execution of the sale deed. A specific allegation has been made in paragraph 5 of the affidavit filed in support of the writ petition to the effect that the petitioner had been requesting the second respondent to fix the boundary lines and hand-over possession of the leased area. In the counter affidavit filed, it is not specifically stated as to whether the subject land has been demarcated and possession has been handed over to the petitioner. However, an evasive reply that on execution of the sale deed automatically the demised premise comes under the possession of the lessee, has been made. In order to verify the fact whether possession has been handed over to the petitioner by demarcating the area, this Court directed the Special Government Pleader to produce the file before this Court and accordingly the file has been produced. On a complete scrutiny of the file, this Court finds that there is no material available in the file to prove that possession has been handed over to the petitioner. Even the original lease deed is not available. Only a copy of the lease deed was available in the file. Thus, it is clear that possession has not been handed over to the petitioner.

9. As per 8A(8)(c) of the Tamil Nadu Minor Mineral Concession Rules, which was then prevailing during the relevant period of time, the lease deed shall be executed within one month from the date of receipt of the order of the State Government or within such further period, not exceeding a period of thirty days, as the District Collector may allow in this behalf. The lease deed executed by the applicant on the appointed day and time with the map of the demarcated leased out area signed by the District Collector and the lessee, appended to it. In the file produced before this Court, no such map is available. That also fortifies the case of the petitioner that the area has not been demarcated and handed over possession to it. Further, it is admitted in the counter affidavit that the said area has been classified as unreserved forest area. Sub Rule 13 of Rule 8A of the Minor Mineral Concession Rules provides that in the case of lease for quarrying of any mineral specified in clause (a) of sub rule (1) in any forest declared to be reserved under section 16 of the Tamil Nadu Forest Act, 1882 or in any land at the disposal of the Government in respect of which rules under section 16 of the said Act have been made, the District Forest Officer concerned shall exercise the power and discharge the duties of the District Collector under this rule. But, in this case, the entire exercise has been done by the District Collector and not by the District Forest Officer, as provided. As per the provisions of Section 2 of the Forest (Conservation) Act, 1980, notwithstanding anything contained in any other law for the time being in force, no State Government or the other authority shall make, except with the prior approval of the Central Government, any order directing (ii) that any forest land or any portion thereof may be used for any non-forest purpose, (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to authority, Corporation, agency or any other organisation not

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owned, managed or controlled by the Government. "Non forest purposes" has been explained to mean breaking up or clearing of any forest land or any portion thereof for (a) the cultivation of tea, coffee, spices, rubber, palms, oil rearing plants, horticultural crops or medicinal plaints; (b) any purpose other than reforestation but does not include any work relating to or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check posts, fire lines, wireless, communications and construction of fencing, bridges and culverts, dams, water holds, trench marks, boundary marks, pipelines or other like purposes.

10. Thus, the power vested with the State Government under Rule 8 of the Tamil Nadu Minor Mineral Concession Rules or any other law containing the similar provision is exercisable subject to the prior approval of the Central Government. There is absolutely no material in the file or in the counter affidavit whether the State Government has obtained the prior approval of the Central Government as per section 2 of the Forest (Conservation) Act, 1980.

11. Presumably, that might be the reason for the respondents for not putting the petitioner on possession in the said area. It is also accepted by the respondents that the petitioner has not been in possession of the leased out area and he has not quarried any material from that area.

12. The petitioner has averred in the affidavit that he has repeatedly requested the respondents to hand-over possession of the quarry land to enable him to carry on the quarrying operations. It is normal expectation that the petitioner who has paid a huge sum of Rs.44.55,000/- is anxious to get along with the quarrying operations, having obtained an order for quarrying granite, but there is no reason attributed against the petitioner for not carrying on the quarrying operations. In order to prove the persistent request made by the petitioner to put him in possession, the petitioner made available before this Court a copy of the letter in SIL/HSR/QY/97-98/551 dated 09.12.1997 wherein the petitioner requested the respondent to give possession of survey No.1/2, Thokkiam village, Thirupathur Taluk. In that letter, the earlier letter of the petitioner has also been referred to. This fact is not disputed by the respondents. Hence, the materials made available before this Court categorically prove that the respondents have not put the petitioner in possession in the subject quarry land as the land is unreserved forest land. As per the provisions of section 2(i) of the Forest (Conservation) Act, even the unreserved forest land is also the forest land for which also prior permission for any non forest activities is essential.

13. Now, in the aforesaid background, if we consider whether the petitioner is entitled to get back the amount paid, as this Court has come to the conclusion that the petitioner was not put in possession of the demised property, in view of the fact that the

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respondents have not obtained prior permission of the Central Government to do quarrying operations, the petitioner cannot be faulted for not carrying on the quarrying operations. If at all anybody has to be found fault with, then it is the second respondent, who has committed a mistake by bringing the said land for public auction, without obtaining prior permission from the Central Government as aforesaid. Even today it is not the case of the respondents that necessary permission has been obtained from the Central Government. The petitioner was not able to do quarrying operations inspite of the fact that it has become a successful bidder and paid the entire amount in a sum of Rs.44,55,000/-. In the above said factual situation, the petitioner cannot be penalised for no fault of it, merely by resorting to the equity clause in favour of the respondent State, particularly, when the petitioner is found to have not benefitted. Now, the quarrying in the forest area has become impossible in view of the non obtaining of the prior permission from the Central Government. Hence, the respondents cannot compel the petitioner to pay for the impossibility. An useful reference can be made to the judgment of the Supreme Court in the case of Mohammed Gazi v. State of Madhya Pradesh, (2000) 4 sCC 342 and Rajkumar Dey v. Tarapada Dey, (1987) 4 SCC 398 and Gursharan Singh v. New Delhi Municipal Committee, (1996) 2 SCC 459.

14. The respondents have taken yet another point that the petitioner approached this Court belatedly for the refund. As already stated, in the previous paragraphs, in December, 1997, the petitioner repeatedly requested the respondent with the fond hope that it will do the quarrying operations to make profit, but having failed in all its attempts to take possession of the quarry land, it finally approached the authorities on 15.06.2000 by writing a letter for refund of the amount. As the petitioner has not obtained the relief sought for from the respondents, it was compelled to file the present writ petition in the year 2000 itself. Even the demand of dead rent has been stayed by this Court absolutely. The matter has been pending in this Court for more than six years. As already stated, the petitioner has complied with all requirements and also paid a huge sum of Rs.44,55,000/- and executed a lease deed and thereafter, it is only on the default committed by the respondent, in not putting the petitioner in possession, the petitioner was not carrying on the quarrying operations. Even today, the respondents are not coming forward to put the petitioner in possession and that shows their inability in view of the statutory bar. Apart from that, the petitioner being a company, which participated in the auction and paid huge amount as aforesaid, is always ready and willing to carry on the quarrying operations. Hence, I am of the view that the petitioner is entitled to have the refund of Rs.44,55,000/-. An useful reference can be made to the case of Salonah Tea Company Ltd. v. The Superintendent of Taxes, Nowgong, AIR 1990 SC 772; Shree Baidyanath Ayurved Bhawan Pvt. Ltd. v. State of Bihar, (1996) 6 SCC 86; and Mafatlal Industries Ltd. vs. Union of India, (1997) 5 SCC 536.

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15. As I have come to the conclusion that the quarrying could not be carried on by the petitioner only on the default committed by the respondents, I am of the considered view that the respondents cannot legally claim the dead rent or the area assessment in lieu of the seigniorage fee which is leviable on the mineral quarried, when the petitioner was not put in possession of the property to carry on the quarrying operations.

16. Learned Government Pleader relied on a Division Bench judgment of this Court in N.A.Thangavelu v. The State Transport Appellate Tribunal (2005) 1 MLJ 430 to contend that when the application is pending before the Government for repayment of the amount paid to the petitioner, a writ petition cannot be maintained. That was a case in which the appellant was a permit holder in respect of a stage carriage plying on the road Vellore to Sathanur Dam via Kannamangalam, Polur, Thiruvannamalai and Thandrampattu for the portions lying in Thiruvannamalai district since 1972. On 12.01.2000 the appellant submitted a joint application along with one M.K. Velu for the transfer of the permit in the name of transferee, namely, the appellant. Since that application has not been disposed off, the writ petition was filed in this Court. In that factual situation, the Division Bench held that the High Court cannot issue permit or licence for the same which is the function of the statutory authority. The facts of the said case are not even comparable to the facts of the present case. Hence, the said judgment, by any stretch of imagination, cannot be regarded as advancing the case of the respondents to non suit the petitioner. Though the petitioner sought for the refund of the amount with 24% interest per annum, having regard to the peculiar facts and circumstances of the case, I am of the view that a direction can be issued to the respondents to refund the lease amount in a sum of Rs.44,55,000/- alone and the petitioner is not entitled to any interest over it since the infraction of the Government as referred to above, is not intentional as the second respondent was of the opinion that unreserved forests can be regarded as a poromboke land, which is manifest from the averment contained in the counter affidavit. The refund of Rs.44,55,000/- shall be made by the respondents to the petitioner within 12 weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government,
   Government of Tamil Nadu,
   Industries Department,
   Fort St. George, Madras 9.

2. The District Collector,
   Vellore District, Vellore.

+1cc to Mr.K.Ramakrishna Reddy, Advocate Sr 54298

AVM (CO)
km/23.11.

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